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C O N F I D E N T I A L SECTION 01 OF 03 GABORONE 002026

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SUBJECT: HIGH COURTCASE DEVELOPMENTS: FIRST PEOPLE OF THE
KALAHARI V. GOVERNMENT OF BOTSWANA

1. (C) SUMMARY: First People of the Kalahari's (FPK) High Court case against the Government of Botswana made slow progress during the month of November. Developments outside the court room, including the FPK leader Roy Sesana's trip to the U.S. and U.K., the increasing involvement of Survival International (SI) in the case, and the emergence of a plan to seek an audience with UN Secretary General Kofi Annan, contributed to further international attention being given to the confrontation. This internationalization of the dispute is likely to reinforce the GOB's position on the relocation of the Basarwa. Other NGOs in Botswana take a different strategy on the fate of the Basarwa and distance themselves from the FPK. END SUMMARY.

SURVIVAL INTERNATIONAL STRENGTHENS TIES WITH FPK

2. (C) At the request of the defendant, the High Court temporarily suspended the Sat case in July to allow the FPK sufficient time to raise funds for a continuance. The FPK case against the Government of Botswana resumed last month. During the interim, the FPK overhauled its team of lawyers, dropping South African attorneys Glyn Williams and John Whitehead, as well as Motswana Chris DuPlessis. British barrister Gordon Bonnet, whom Williams had originally insisted on including in the legal team, took over as lead counsel. Puma Boko, a local attorney experienced in human rights cases, joined him. According to Alice Mogwe, Director of the Botswana Center for Human Rights (also known as Ditshwanelo), the reshuffling of attorneys reflected SI's growing influence with the FPK. Bonnet reportedly is closely associated with SI, and an employee of that organization accompanied him to the Court. SI also is said to have played a key role in flying FPK leader Roy Sesana to the U.K. and to the U.S. in August and September on tours to promote the group's cause and raise money.

3. (C) When asked about the respective roles of SI and Ditshwanelo in the case, Sesana told PolOff that SI was now sponsoring the case. Sesana's assistant Jumanda asserted, however, that Bonnet's links to SI notwithstanding, he is volunteering as counsel for the FPK, not acting on behalf of SI. Sesana confessed to being uncertain of Ditshwanelo's role and indicated his intention to meet with Alice Mogwe to confer about this.

DITSHWANELO ASSISTING SAN MORE BROADLY

4. (C) In a November 16 meeting with PolOff, Ms. Mogwe explained that Ditshwanelo remains a friend of and advocate for the Sat but has no role in the current court case. Ditshwanelo, she said, had assisted FPK and other Sat not represented by that group to meet with the Government to express their needs, and even extract some compromises. Convinced that negotiation, rather than confrontation with the GOB was the most effective strategy, Ditshwanelo began to pull back earlier this year when it became clear that the FPK preferred a court battle. At this point, according to Alice Mogwe, Ditshwanelo still seeks to assist Sat in ways not connected to the court case and intends to resume working with them in negotiations with the Government when the court case finally concludes.

FIRST PEOPLES OF THE KALAHARI NOT SOLE VOICE FOR SAN

5. (U) Ditshwanelo is not the only group concerned about San rights that has distanced itself from the FPK case. On November 25, Kuru Trust launched "Voices of the San", a hefty, detailed, beautifully-illustrated volume celebrating Sat culture. The event, held in Gaborone, attracted a large, high-profile crowd. The UNDP Representative gave the keynote address; the MP for Ghanzi was in the audience. No members of FPK were present, however. Its absence underscores the distance Kuru Trust, an umbrella organization including many projects that advance Sat development, maintains from Sesana's group. And in a recent newspaper interview with the newly elected BDP MP from Ghanzi District, Christian De Graaf, he

was quoted as stating flatly that most Sat/Basarwa in his district are happy with the relocation out of the Central Kalahari Game Reserve and into the village of New Xade. Representatives of Sat groups near Shakawe, in the northwest Ngamiland District, during a briefing session with the DCM who visited the area from December 3-5, also distanced themselves from the FPK.

DELAYS DUE TO TECHNICALITIES AND RISING CRIME IN GABORONE

16. (U) When the High Court hearings resumed on November 3, lead counsel for the state Sidney Pilane challenged Boko's right to represent the applicants. Pilane argued that Boko needed a power of attorney signed by each of the 242 applicants in the case. The court ruled that because a letter signed by 131 former CKGR residents had instructed Roy Sesana to engage a new attorney, and Boko had obtained a power of attorney signed by Sesana, Boko could properly represent those applicants. The remaining applicants in the case, the court concluded, were without representation since DuPlessis, Whitehead and Williams had withdrawn.

17. (U) After just one day of substantive hearings, the case was again delayed. On November 6, thugs assaulted Pilane by the roadsides stabbed him repeatedly, and left him seriously wounded. The state requested a delay until its lead counsel could return to courtroom. The High Court agreed to resume on November 22. The applicants continued to present witnesses until the court adjourned for the holidays on December 1. Hearings are scheduled to resume on January 17.

WITNESSES DESCRIBE FORCED RELOCATION

18. (U) The witnesses for the FPK thus far have sought to establish that the relocation process was coercive. They have testified that political officials told them that they would have to leave the CKGR. The uniformed police officers who came to move them to the resettlement points, they claimed, intimidated and mistreated them. Several said they had lost livestock in the process and had seen their dwellings destroyed by government officers to discourage their return. The state presented evidence that residents of the reserve had signed agreements to relocate and had received compensation. Witnesses countered that they did not understand the documents they had signed or the amount of compensation they were to receive. One witness, however, did state that he knowingly signed the agreement, received the compensation and then returned to the CKGR.

19. (U) Witnesses described the resettlement village of New Xade as a crime-ridden and 'foreign' environment. In contrast, GOB sources have argued that New Xade is virtually identical to Old Xade in the CKGR, except that it boasts more public amenities. State counsel cited an anthropologist's descriptions of Sat life in the CKGR in the 1960s to establish that San customs are identical those of other Batswana. The implication of this argument is that there is no need for the GOB to treat the San differently from any other Batswana.

FPK SEEKS AUDIENCE WITH UNSYG

10. (U) In a November 24 conversation, Scsana and Jumanda informed PolOff that Rupert Isaacson is now trying to secure a meeting for Sesana with UN Secretary General Kofi Annan. Isaacson, who is affiliated with the Indigenous Land Rights Fund, helped organize the August/September trip to the US and the associated fund-raising efforts. Jumanda did not indicate the likelihood of this meeting's materializing. The meeting would aim to increase international pressure on the GOB to change its policies relating to the Sat.

COMMENT

11. (C) The FPK and the COB continue to tread their divergent paths and claim authority for different narratives. The FPK's strategy to internationalize this issue through fund-raising abroad, working with well-funded foreign NGOs, and engaging the United Nations is understandable, if counterproductive in the long run. The COB, accustomed as it is to being praised by the international community, responds by asserting that the FPK is misrepresenting the facts and deliberately embarrassing the government before the world, in order to force the GOB's hand and cede to FPK's demands of restoring Sat access to the CKGR, their right to hunt, and the provision of public services there. Whatever the outcome of this court case however, the Sat, like many other remote area dwellers (RADs) will still face the challenges of poverty and marginalization.

The FPK's current strategy is likely to hamper any future cooperative role with the government in addressing the perennial problem of rural poverty, once the trial has ended.
HUGGINS